Vol 31

FILED
JAN 31 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 731

ARTHUR E. MORGAN,
Petitioner and Appellant below,

vs.

TENNESSEE VALLEY AUTHORITY, A UNITED STATES CORPORATION; HARCOURT A. MORGAN AND DAVID E. LILIENTHAL, AS MEMBERS OF THE BOARD OF DIRECTORS OF APPELLEE, TENNESSEE VALLEY AUTHORITY,
Respondents and Appellees below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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INDEX.

	PAGE
Statement of the Matter Involved	1
Reasons for Allowance of Writ	6
Statement as to Jurisdiction	7
Brief in Support of Petition	8
Memorandum of Points	10
The Opinion of the Circuit Court of Appeals.	10
What is the Tennessee Valley Authority?	11
The Act restricts the right of the President to remove a Director	16
The Decision should follow that of the Humphrey case	19

List of Authorities Cited.

Ashwander v. Tennessee Valley Authority, 297 U. S. 288 (1936) 12
Commonwealth of Pennsylvania v. Benn, 284 Penn. 421 (1925) 12
Forsyth v. City of Hammond, 166 U. S. 506 (1897) 8
Humphrey's Executor v. United States, 295 U. S. 602 (1935) 6, 8, 10, 13, 19, 20
Interstate Commerce Commission v. C. N. O. and T. P. R. Co., 167 U. S. 479 (1897) 12
Monongahela Navigation Co. v. United States, 148 U. S. 312 (1893) 13
Myers v. United States, 272 U. S. 52 (1926) 8, 19
Prentis v. Atlantic Coast Line Co., 211 U. S. 210 (1908) 12
Republican Mountain Silver Mines v. Brown, 58 Fed. 644 (1893) 13
Schechter Corporation v. United States, 295 U. S. 495 (1935) 15

Provisions of the Tennessee Valley Authority Act.

Section 2 (a) (b) 4
Section 2 (e) (f) (g) (h) 5
Section 4 (f) 5, 16
Section 6 .....6, 16

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

The petitioner respectfully shows:

I.

Summary Statement of the Matter Involved.

Congress on May 18, 1933, enacted the Statute known as the "Tennessee Valley Authority Act of May 18, 1933", c. 32, 48 Stat. 58 (1933), 16 U. S. C., Secs. 831 ff. (1934); and amended the same by the Act of August

31, 1935, c. 836, 49 Stat. 1075 (1935), 16 U. S. C., Supp. IV, Secs. 831 c. ff. (1938). Under the provisions of the Act of 1933, on May 22, 1933, petitioner was appointed by the President, was thereafter confirmed by the Senate, took the oath, gave the bond required by the Act and entered on his duties as a member and chairman of the board of directors of the Appellee, Tennessee Valley Authority, a corporation created by the Act (Trans., 3, 4). He served continuously until his *de facto* removal by the President (Trans., 4), as hereinafter stated. Appellant's appointment was for a term of nine years beginning May 18, 1933, and ending May 18, 1942 (Trans., 3).

On March 11, 1938, the three directors appeared at the White House on call of the President who stated that he had called the directors to secure the facts as to certain charges made by the petitioner against the other two directors (respondents here), and also the facts as to charges made by the other two against the petitioner. Three of these meetings or conferences were held (Trans., 5). None of the charges made against the petitioner related to or had to do with permitting or giving consideration to a political test or qualification or failing to observe the basis of merit and efficiency in the appointment of officials or selection or promotion of employees of the corporation (Trans., 5, 56). The petitioner refused to participate in the conferences called by the President and so did not produce evidence in support of his own charges or in defense of those made against him.

On March 22, 1938, the President directed a letter to the petitioner advising him that he was removed as a member and chairman of the board of directors of the respondent, Tennessee Valley Authority (Trans., 5). In this letter the President gave as reasons for

the removal, the making of charges against his fellow directors without reasonable excuse or justification, obstructing the work of the Authority and refusal to submit facts or respond to questions relating to charges made by his fellow directors. None of these reasons involved directly or remotely any charge that the petitioner had been a party to the appointment of officials, the selection of employees, or their promotion upon the basis of political tests or qualifications, or that in making such appointments, selections or promotions petitioner had failed to observe the basis of merit and efficiency (Trans., 5, 56-57). On the following day, March 23, 1938, the President sent to the Congress his memorandum opinion in the matter, a copy of the letter of removal, an opinion of the acting Attorney General and a stenographic transcript of the three conferences (Senate Document No. 155, 75th Congress, Third Session, printed in full at pages 118 to 354 of the transcript).

At the last conference with the President the petitioner challenged and denied the President's power to remove him for the reasons stated (Trans., 6). Immediately after his attempted removal by the President, the petitioner protested to the President and to the respondent (Trans., 57-62). He demanded recognition as a member and chairman of the board of directors of the respondent, Tennessee Valley Authority, and was refused (Trans., 58-59, 62). He demanded his salary and was likewise refused and he was notified that his name had been stricken from the payroll of the Authority (Trans., 66-67).

The petitioner instituted suit in the Chancery Court of Tennessee to recover his accrued salary and for a judgment declaring that the attempt to remove him was ineffectual and that he has continued to be and is

lawfully a member of and chairman of the board of directors of the respondent, Tennessee Valley Authority. Respondents caused the case to be removed to the United States District Court for the Eastern District of Tennessee, Northern Division (Trans., 72-79), and there moved to dismiss the complaint (Trans., 86). Their motion was sustained. The judgment was for respondent (Trans., 102).

Petitioner thereupon duly appealed from such judgment to the United States Circuit Court of Appeals for the Sixth Circuit at its October Term, 1939. That Court on December 6, 1940, affirmed the judgment of dismissal of the District Court.

Petitioner now files this his Petition for Writ of Certiorari in this Court to review such decision of the United States Circuit Court of Appeals for the Sixth Circuit. The only question presented by the record is the sufficiency of the complaint as filed in the District Court; or stated otherwise, whether or not the action of the President was effective lawfully to remove the appellant as a member and chairman of the board of directors of the appellee, Tennessee Valley Authority.

The provisions of the Tennessee Valley Authority Act with respect to the appointment and qualification of the directors of the Appellee Authority are as follows:

> "Sec. 2 (a) The board of directors of the Corporation (hereinafter referred to as the 'board') shall be composed of three members, to be appointed by the President, by and with the advice and consent of the Senate. In appointing the members of the board, the President shall designate the chairman. All other officials, agents, and employees shall be designated and selected by the board.
>
> "(b) The terms of office of the members first

taking office after the approval of this Act shall expire as designated by the President at the time of nomination, one at the end of the third year, one at the end of the sixth year, and one at the end of the ninth year, after the date of approval of this Act. A successor to a member of the board shall be appointed in the same manner as the original members and shall have a term of office expiring nine years from the date of the expiration of the term for which his predecessor was appointed.

"* * *

"(e) Each of the members of the board shall be a citizen of the United States. * * * No member of said board shall, during his continuance in office, be engaged in any other business, but each member shall devote himself to the work of the Corporation.

"(f) No director shall have financial interest in any public-utility corporation engaged in the business of distributing and selling power to the public nor in any corporation engaged in the manufacture, selling, or distribution of fixed nitrogen or fertilizer, or any ingredients thereof, nor shall any member have any interest in any business that may be adversely affected by the success of the Corporation as a producer of concentrated fertilizers or as a producer of electric power.

"(g) The board shall direct the exercise of all the powers of the Corporation.

"(h) All members of the board shall be persons who profess a belief in the feasibility and wisdom of this Act."

The provisions of the Act with respect to the removal of a director are as follows (Trans., 18, 23):

"Sec. 4. * * *

"(f) * * * any member of said board may be removed from office at any time by concurrent resolution of the Senate and the House of Representatives."

"Sec. 6. In the appointment of officials and the selection of employees for said Corporation, and in the promotion of any such employees or officials, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency. Any member of said board who is found by the President of the United States to be guilty of a violation of this section shall be removed from office by the President of the United States, and any appointee of said board who is found by the board to be guilty of a violation of this section shall be removed from office by said board."

II.

Reasons Relied on for the Allowance of the Writ.

A.

The decision of the Circuit Court of Appeals for the Sixth Circuit in holding that the President had the power to remove petitioner from his office as a member and chairman of the board of directors of the Tennessee Valley Authority for a cause or reason other than that provided by Section 6 of the Tennessee Valley Authority Act involves an important question of Federal law which has not been, but should be, settled by this Court.

B.

The decision of the said Circuit Court of Appeals of the Sixth Circuit in holding that the President had the power to remove petitioner from his office as a member and chairman of the board of directors of the Tennessee Valley Authority is a decision of a Federal question in a way probably in conflict with an applicable decision of this Court, viz., *Humphrey's Executor* v. *United States,* 295 U. S. 602.

III.

Statement as to Jurisdiction.

This Court has jurisdiction to review by Certiorari the decisions of the several Circuit Courts of Appeal, pursuant to Section 347 of the United States Code Annotated. (Judicial Code, Section 240, amended); and under the provisions of Article III, Sections 1 and 2 of the Constitution of the United States.

WHEREFORE, your petitioner prays that a Writ of Certiorari issue under the seal of this Court directed to the United States Circuit Court of Appeals for the Sixth Circuit commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings in the said Circuit Court of Appeals had in the case numbered and entitled on its docket, "No. 8427, Arthur E. Morgan, Appellant, *vs.* Tennessee Valley Authority, a United States Corporation; Harcourt A. Morgan and David E. Lilienthal, as members of the Board of Directors of Appellee, Tennessee Valley Authority, Appellees," to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States and that the judgment herein of the said United States Circuit Court of Appeals for the Sixth Circuit be reversed by this Court, and for such further relief as to this Court may seem proper.

ARTHUR E. MORGAN,
Petitioner.

By EDWIN H. CASSELS,
Attorney for Petitioner.

Dated January 30, 1941.